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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,828	05/08/2002	Jan Dietrich	1986	8524

7590 07/29/2004  
Striker Striker & Stenby  
103 East Neck Road  
Huntington, NY 11743

EXAMINER

GRAHAM, GARY K

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/031,828	Applicant(s) DIETRICH ET AL.	
	Examiner Gary K Graham	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01222002&amp;05082002</u> . | 6) <input type="checkbox"/> Other: ____.                                                |

## DETAILED ACTION

### *Specification*

The disclosure is objected to because of the following informalities: Reference to the claims from the written description does not appear proper. The written description should not look to the claims to define the invention. For example, see page 1, lines 1 and 15 under "Prior Art".

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 appears confusing since it sets forth groove-like constrictions on opposite sides of the strip when longitudinal grooves have already been set forth in claim 1. Applicant goes on to place the spring strips into the constrictions. Such does not appear proper since the spring strips have already been placed into the longitudinal grooves. It appears applicant has set forth the spring strips as being in two different grooves simultaneously.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-9, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoyler (German patent 1028896).

The patent to Hoyler discloses the invention as is claimed. Note figures 1 and 2 which show a rubber wiper strip (1) having grooves in longitudinal sides thereof, said grooves have band-like spring support elements (5) therein. The support element is connected to a device (7) for connecting the blade to a driven wiper arm. A crosspiece (6) is provided at each end of the wiper blade and engages the support elements. Each crosspiece has a middle section which extends spaced a distance from the upper band surface of the spring strip. The crosspieces also have a stop extending from the middle section.

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With respect to claim 7, note crosspiece (9) disposed in a middle region of the spring strips. Such is considered to be “embodied” as part of the connecting device (7). At least as far as such defines any particular structure.

With respect to claim 11, the thickness of the wall between grooves of Hoyler is smaller than the distance between adjacent edges of the spring strips (see figure labeled Schnitt C-C). The crosspieces are on the outer side of the wall.

Claims 1, 2, 3, 6, 7, 8, 11, 12-14 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Scinta (US patent 3,116,507).

The patent to Scinta discloses the invention as is claimed. Note figures 2, 4 and 8 which show a rubber wiper strip (35) having grooves in longitudinal sides thereof which define a neck (38), said grooves have band-like spring support elements (28) therein. The support element is connected to a device (23,24) for connecting the blade to a driven wiper arm (20). Crosspieces (41, 36 and 43) are provided at each end of the wiper blade and engage the support elements. Each crosspiece has a middle section which extends spaced a distance from the upper band surface of the spring strip. The crosspieces (43) also have a stop extending from the middle section.

With respect to claim 7, note crosspiece (31)) disposed in a middle region of the spring strips. Such is considered to be “embodied” as part of the connecting device (30). At least as far as such defines any particular structure.

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With respect to claim 11, the thickness of the wall between grooves of Scinta is smaller than the distance between adjacent edges of the spring strips (see figure 8). The crosspieces are on the outer side of the wall.

Claims 1, 2, 3, 5, 6, 8, 9, 11, are rejected under 35 U.S.C. 102(b) as being anticipated by Rickett (GB patent 1,222,648).

The patent to Rickett discloses the invention as is claimed. Note figures 1 and 2 which show a rubber wiper strip (10) having grooves (22,24) in longitudinal sides thereof which define a neck (20), said grooves have band-like spring support elements (32,34) therein. The support elements are for connecting to a device for connecting the blade to a driven wiper arm. Crosspieces (33) are provided at each end of the wiper blade and engage the support elements. Each crosspiece has a middle section (37) which extends spaced a distance from the upper band surface of the spring strip. The crosspieces (33) also have a stop (36) extending from the middle section.

With respect to claim 11, the thickness of the wall between grooves of Rickett is smaller than the distance between adjacent edges of the spring strips. The crosspieces are on the outer side of the wall.

Claims 1, 2, 3, 6, 11, 12, 13, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosen (US patent 3,636,583).

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The patent to Rosen discloses the invention as is claimed. Note figures 1 and 2 which show a rubber wiper strip (11) having a closed conduit (24) therein and having constricting grooves (22,24) in longitudinal sides thereof which define a neck (16), said grooves have band-like spring support elements (20) therein. The support elements are for connecting to a device for connecting the blade to a driven wiper arm. Crosspieces (21) are provided at each end of the wiper blade and engage the support elements. Each crosspiece has a middle section which extends spaced a distance from the upper band surface of the spring strip.

With respect to claim 11, the thickness of the wall between grooves of Rickett is smaller than the distance between adjacent edges of the spring strips. The crosspieces are on the outer side of the wall.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosen (US patent 3,636,583).

The patent to Rosen discloses all of the above recited subject matter with the exception of the crosspieces being welded to the spring strips.

While Rosen shows the crosspieces as being held or attached to the support elements via detents (22), to permanently attach the crosspieces via welding would be an obvious variant of Rosen. Welding is a well known means of permanently joining metal components.

It would have been obvious to one of skill in the art to weld the crosspieces of Rosen to the support elements, to increase the security of the connection, thus preventing inadvertent separation during use or other undesirable times. Employment of welding to permanently connect components is well known in the art where a secure connection is desired.



### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9, 10, 11, 9, 12, 13, 14, 15, 15, 16, 17 and 9 respectively, of copending Application No. 10/049,712. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the '712 application fully encompass the claims of the instant application. With respect to claim 4, to attach the crosspieces of the '712 application by welding would have been obvious to one of skill in the art as welding is a well known means of attaching metal pieces together.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

*Allowable Subject Matter*

It appears that claim 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Gary K. Graham". The signature is fluid and cursive, with the first name "Gary" being more prominent than the last name "Graham".

Gary K Graham  
Primary Examiner  
Art Unit 1744

26 July 2004  
GKG